

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
SBC Communications Inc.)	
)	
Petition for Declaratory Ruling)	WCB Docket No. 04-424
Concerning Terminating Switched)	
Access Charges for Wireless-)	
Originated Calls)	

REPLY COMMENTS OF SBC COMMUNICATIONS

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SBC'S REPLY COMMENTS¹

There are three fundamental reasons the Commission should deny Global Crossing's petition and grant SBC's petition. First, SWBT's tariff provisions confirm that SWBT may use calling and called party telephone numbers to determine whether to charge interstate or intrastate rates for Feature Group D ("FGD") terminating switched access. Contrary claims made by Global Crossing and other long distance carriers contravene the plain language of SWBT's tariff. Second, the use of telephone numbers to assess terminating switched access charges for wireless originated calls is not only consistent with and wholly supported by the language of SWBT's tariffs, it also is fully supported by Commission policy and precedent. None of the disparate Commission orders, or the smattering of isolated passages from those orders, on which AT&T and the other long distance carriers base their arguments, address the issue of using telephone numbers to assess terminating switched access charges. The long distance carriers thus provide no legal support to refute the Commission's specific determinations that telephone numbers may

¹ SBC Communications Inc. filed its petition, as well as these reply comments, on behalf of itself and its wholly-owned subsidiaries, including: Southwestern Bell Telephone LP, Pacific Bell, Nevada Bell, Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, Ameritech Wisconsin, the Southern New England Telephone Company, ASI, AADS Illinois, AADS Michigan, AADS Indiana, AADS Ohio, AADS Wisconsin, SBC LD, and SBC Telecom (collectively "SBC").

be used to assess terminating switched access charges. Finally, Global Crossing's proposed alternative method of determining jurisdiction for purposes of assessing terminating switched access charges for wireless originated long distance calls would open the door to the sort of access avoidance schemes that the Commission has rejected and should continue to refuse to sanction. Accordingly, SBC requests that the Commission affirm that SWBT may use the telephone numbers of the calling and called parties in order to determine whether to charge interstate or intrastate terminating switched access rates for wireless originated long distance calls. The Commission also should deny Global Crossing's suggestion that the point of entry of a wireless originated long distance call into a long distance carrier's network should be considered the geographic origin of such calls for purposes of determining whether to assess interstate or intrastate terminating switched access charges.

I. THE USE OF TELEPHONE NUMBERS TO DETERMINE WHETHER TO ASSESS INTERSTATE OR INTRASTATE TERMINATING SWITCHED ACCESS CHARGES FOR WIRELESS ORIGINATED LONG DISTANCE CALLS IS FULLY CONSISTENT WITH SWBT'S INTERSTATE TARIFF

There is no dispute in this proceeding as to the tariff terms that govern the process for determining the proper assessment of FGD terminating switched access charges for wireless originated long distance calls. The long distance companies agree that those terms are set forth in SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b).² There also is no dispute as to the general process spelled out in that section of SWBT's tariff. That language clearly states that SWBT assesses access charges for all FGD terminating switched access traffic based on a percentage of interstate usage ("PIU"). In its entirety, the relevant tariff section provides:

For FGC, FGD, BSA-C, or BSA-D, Switched Access Services, where jurisdiction can be determined from the call detail, the Telephone Company will bill according to such jurisdiction by developing a projected interstate percentage. The projected interstate percentage will be developed on a monthly basis, by end

² See, e.g., *AT&T Comments* at 4.

office, when the Switched Access Service minutes (FGC, FGD, BSA-C and BSA-D) are measured by dividing the measured interstate terminating access minutes (the access minutes where the calling number is in one state and the called number is another state) by the total terminating access minutes.

For FGC, FGD, BSA-C and BSA-D Switched Access Services, where call details are insufficient to determine jurisdiction, the customer will provide an interstate percentage of FGC, FGD, BSA-C or BSA-D terminating access minutes for each end office or LATA from which the customer may terminate traffic. If a LATA-level PIU factor is provided by the customer, the specified percentage will be applied to all end offices to which the customer may terminate traffic within the LATA or to those end offices for which an end office-level PIU is not provided.³

The fundamental dispute in this instance is whether FGD terminating switched access charges for wireless originated long distance traffic should be based on a PIU calculated by SWBT based on calling and called party telephone numbers or on a PIU supplied by its FGD customers.⁴

SWBT's tariff clearly spells out the circumstances in which the PIU is calculated by SWBT and in which it is provided by SWBT's FGD. All commentators agree that the PIU is calculated by SWBT "where jurisdiction can be determined from the call detail," and the PIU is provided by the FGD customer "where call details are insufficient to determine jurisdiction."⁵ Resolution of the dispute between Global Crossing and SBC thus turns on what it means to say that "jurisdiction can be determined from the call detail."

AT&T and the other long distance carriers argue that calling and called party telephone numbers can never determine the jurisdiction of wireless calls, and, therefore, a PIU supplied by the customer must always be used to assess FGD terminating switched access charges.⁶

³ SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b)

⁴ See, e.g., *AT&T Comments* at 11-12; *MCI Comments* at 3-4.

⁵ SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b); see e.g., *AT&T Comments* at 5; *Global Crossing Comments* at 3.

⁶ See, e.g., *AT&T Comments* at 12 ("Accordingly, pursuant to its governing tariff, SBC is *required* to use the PIU factor provided by the customer to determine the jurisdiction of these wireless calls.")

Essentially, by looking outside the four corners of SWBT's tariff and referencing various Commission statements about the general nature of wireless traffic, the long distance carriers interpolate SWBT's tariff to say that SWBT will calculate the PIU only "where the *geographic origination and termination* of a call can be determined from the call detail." The Commission should reject the long distance carriers' efforts to substitute their own self-serving language for the language actually in SWBT's tariff.

The language in SWBT's tariff requires that an assessment be made as to whether jurisdiction may be "determined" based on call detail. The long distance carriers essentially treat jurisdiction not as something that must be determined, but as a given proposition depending on the nature of the traffic involved. SWBT's tariff, however, does not establish different approaches—depending on the nature of the traffic involved—to assessing whether jurisdiction may be determined. Rather, the tariff establishes a single mechanism for assessing whether jurisdiction may be determined: the presence or absence of calling and called party telephone numbers in the call detail. The presence of such telephone numbers means that the PIU will be calculated by SWBT, and its absence means that the PIU will be calculated and provided by the FGD customer. That is the only interpretation that is consistent with the actual language and structure of SWBT's FGD terminating switched access tariff.

That interpretation is reinforced by the Commission's 1992 order rejecting challenges to the very tariff language at issue here.⁷ In defending the jurisdictional language in its tariff against challenges from MCI and Sprint, SWBT specifically indicated to the Commission that a customer-supplied PIU would not be used, ". . . when the [calling party number] is passed on a

⁷ See Southwestern Bell Telephone Company Revisions to Tariff F.C.C. Nos. 68 and 73, Transmittal 2182, *Order*, DA 92-611, 7 FCC Rcd. 3456 (May 15, 1992).

call terminating to SWBT.”⁸ When that occurs, SWBT made clear that “the jurisdiction of the call can be determined from the actual call detail of the usage record (*i.e. originating number and terminating number are present on the record*), and thus there is no reason to apply any other PIU factor.”⁹ That accordingly is the meaning sanctioned by the Commission when it issued its order allowing SWBT’s tariff to take effect, having been presented “no compelling argument . . . that the tariff revisions are so patently unlawful as to warrant rejection.”¹⁰

The long distance carriers largely ignore the Commission’s order addressing SWBT’s tariff. WilTel is the only carrier to even discuss it.¹¹ WilTel asserts that the Commission’s order “simply found that there were no issues at the time.”¹² But the plain fact is that the Commission allowed to go into effect tariff language to which SWBT had ascribed a very precise definition, *i.e.*, that the phrase “where jurisdiction can be determined from the call detail” means where the “originating number and terminating number are present on the record.” The Commission’s decision allowing SWBT’s tariff to take effect confirms its endorsement of using telephone numbers to determine jurisdiction for purpose of assessing terminating switched access charges.

The use of telephone numbers to assess interstate or interstate rates for FGD terminating switched access is also the only reading of SWBT’s tariff consistent with *all* of the language in the tariff.¹³ In the sentence immediately following the sentence containing the phrase, “where

⁸ *Id.*

⁹ *Id.* ¶ 7. (Emphasis added.)

¹⁰ *Id.* ¶ 8.

¹¹ See *WilTel Comments* at 6-7.

¹² *Id.* at 6.

¹³ Cf. *U.S. v. Vargas-Duran*, 356 F.3d 598, 613 (5th Cir. 2004)(“However, before deciding that a term is ambiguous and turning to outside sources we must consider whether other provisions within a particular statute lend clarity to that term.”)

jurisdiction can be determined from the call detail,” SWBT’s tariff parenthetically defines “interstate terminating access minutes” as “access minutes where the *calling number* is in one state and the *called number* is in another state.”¹⁴ The sole defining language in SWBT’s FGD terminating switched access tariff thus firmly establishes that telephone numbers may be used to determine whether traffic is interstate or intrastate for purposes of assessing terminating switched access charges.

AT&T and the other long distance carriers assert that this definition only applies when the jurisdiction of a call is already determined to be interstate.¹⁵ That is no more than a tautology, however, reflecting their argument that the nature of the traffic determines how its jurisdiction will be determined. The long distance carriers also claim that the parenthetical definition is irrelevant to this issue because it appears in the paragraph containing the phrase “where jurisdiction can be determined from the call detail.”¹⁶ But the mere fact that the parenthetical definition appears in that same paragraph does not mean, *ipso facto*, that it is merely derivative of a foregone conclusion that traffic is interstate. Indeed, such an interpretation would render the parenthetical definition meaningless, because there would be no possible need to clarify the phrase “interstate terminating access minutes.” The long distance carriers would thus violate the basic canon that construction of one term or phrase can not render meaningless another term or phrase in the same provision.¹⁷

¹⁴ SWBT Tariff F.C.C. No. 73 § 2.4.1(A)(2)(b)(emphasis added).

¹⁵ See, e.g., *AT&T Comments* at 14.

¹⁶ See, e.g., *AT&T Comments* at 14.

¹⁷ See, e.g., *Summit Packaging Systems, Inc. v. Kenyon & Kenyon*, 273 F.3d 9, 12-13 (1st Cir. 2001)(“... it is a basic principle of contract law that constructions that render contract terms meaningless should be avoided.”)

Finally, the long distance carriers' argument must be rejected because it would prove too much. Even for wireline circuit switched calls, there are instances in which telephone numbers do not reveal the geographic locations of the calling and called parties. Telephone numbers are surrogates for the geographic locations of customers,¹⁸ no different from other surrogates the Commission has used for identifying geographic end points of calls.¹⁹ The fact is that there is no direct way to know the geographic location, *i.e.*, the longitude and latitude, of the end points of *any* call, wireline or wireless. The real question thus is, and always has been, whether any particular surrogate is acceptable in a given situation for a particular purpose.²⁰

In this instance, there is no evidence that telephone numbers are necessarily an unacceptable means of determining the jurisdiction of wireline originated long distance calls *for purposes of assessing terminating switched access charges*.²¹ While it is correct that wireless telephone numbers do not necessarily identify the geographic location of a wireless subscriber,

¹⁸ See, *e.g.*, *Global Crossing Comments* at 5 ("the only value of the telephone numbers is to serve as indicators of *actual* geographic locations.")

¹⁹ See, *e.g.*, Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, *Memorandum Opinion and Order*, WC Docket No. 03-211, FCC 04-267 ¶ 26 n. 98 (Nov. 12, 2004)("Vonage Order")("Where the Commission has found it difficult to apply an end-to-end approach for jurisdictional purposes, it has proposed or adopted proxy or allocation mechanism to approximate an end-to-end result."); see also Thrifty Call, Inc. Petition for Declaratory Ruling Concerning BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1, *Declaratory Ruling*, DA 04-3576 ¶ 15 n. 49 (Nov. 12, 2004)("Thrifty Call Order")("geographic end points of a call may be a poor fit as applied to services that involve the Internet.")

²⁰ Cf. Federal-State Joint Board on Universal Service, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 98-278 (Oct. 26, 1998)("CMRS Safe Harbor Order")("Commission adopted a set percentage to represent wireless interstate revenues for USF reporting.")

²¹ Of course, where a long distance carrier takes steps to alter the telephone numbers associated with a call in order to engage in access arbitration, *e.g.*, as AT&T has done with the calling card calls presently at issue in another proceeding, the telephone numbers assigned to the call would cease to be an acceptable means of determining the jurisdiction of the call.

that fact, standing alone, does not render telephone numbers unacceptable as a device for assessing terminating switched access charges.

In the early days of wireless communications, the Commission assumed that wireless calls were largely local.²² Only as interstate roaming reaches a certain level would wireless telephone numbers no longer reliably indicate, in the aggregate, the states in which wireless calls originate.²³ There is no evidence in the record, however, that interstate roaming has reached that level. More generally, there is no evidence that the use of telephone numbers—compared with other surrogate information for the geographic end points of wireless originated calls—produces, in the aggregate, any net increase (or decrease) in terminating access charges paid by long distance carriers.²⁴ In the absence of such evidence, it would be unreasonable for the Commission to reverse longstanding industry practice²⁵ and declare that telephone numbers are an inappropriate mechanism for assessing FGD terminating switched access charges. The only sensible interpretation of the phrase “where jurisdiction can be determined from call detail,” and

²² The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Memorandum Opinion and Order*, FCC 86-85 App. B ¶ 5, 59 R.R.2d 1275, 1284 (Mar. 5, 1986) (“1986 Wireless Order”).

²³ See, e.g., *WilTel Comments* at 4 (“Mobile service users are roaming more often and it can’t be assumed anymore that the vast majority of their calls will be in the locality where they received their telephone number.”)

²⁴ The situation complained of by Global Crossing, of course, runs both ways. Some calls that would be interstate based on the geographic end points of those calls may be classified as intrastate based on the telephone numbers, and some calls that would be intrastate based on the geographic end points may be classified as interstate based on the telephone numbers.

²⁵ Contrary to Global Crossing’s assertions, see *Global Crossing Comments* at 9, this is an industry-wide issue, and its resolution will have industry-wide implications. Other ILEC tariffs contain provisions similar to SWBT’s. See, e.g., *BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1*, § 2.3.10(A)(1). In fact, AT&T points out that the “same issues” have been raised in litigation between AT&T and BellSouth. *AT&T Comments* at 6.

the only interpretation consistent with the actual language in SWBT's tariff, is "where call detail includes the telephone numbers of the calling and called parties."

II. THE USE OF TELEPHONE NUMBERS TO DETERMINE WHETHER TO ASSESS INTERSTATE OR INTRASTATE TERMINATING SWITCHED ACCESS CHARGES FOR WIRELESS ORIGINATED LONG DISTANCE CALLS IS FULLY CONSISTENT WITH COMMISSION PRECEDENT

SBC demonstrated in its petition that the use of telephone numbers to determine applicable terminating switched access charges for wireless originated calls is not only consistent with and wholly supported by the language of SWBT's tariffs, it also is fully supported by Commission policy and precedent. Indeed, the Commission specifically addressed the issue of using telephone numbers for assessing terminating switched access charges in its *Feature Group A and Feature Group B Order*.²⁶ In that order, the Commission adopted the recommendations of the Joint Board investigating a comprehensive solution to the measurement and verification of interstate and intrastate usage of Feature Group A and Feature Group B access services. The need for such a solution arose specifically because Feature Group A and Feature Group B "do not provide ANI capability."²⁷ And, in discussing the problem, the Commission made clear its understanding that the calling number information provided by ANI "when combined with the called number *reveals the jurisdictional nature of the call*."²⁸ The Commission thus clearly articulated that telephone number information is an appropriate mechanism for determining jurisdiction for the specific purpose of assessing terminating switched access charges.

The long distance carriers have no real response to this conclusion. In its effort to distinguish the Commission's *Feature Group A and Feature Group B Order*, AT&T claims that

²⁶ Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service, *Recommended Decision and Order*, CC Docket No. 85-124, FCC 88J-5, 4 FCC Rcd. 1966.

²⁷ *Id.* ¶ 3.

²⁸ *Id.* n. 7. (Emphasis added.)

the only issue before the Commission was the proper treatment of Feature Group A and Feature Group B access services for which call detail did not contain information about the originating number of a call in the call detail.²⁹ But that is precisely the point. The very need to establish an alternate method to determine the jurisdiction of Feature Group A and Feature Group B traffic arose only because such traffic did not contain telephone number information.³⁰ And the Commission specifically contrasted the lack of such information for Feature Group A and Feature Group B with other access services, such as Feature Group D, which include calling and called party telephone numbers used to determine jurisdiction. Global Crossing also claims that when the Commission said that telephone number information “reveals the jurisdiction” of a call, it really meant “reveals an indicator of geography.”³¹ Of course, the Commission said no such thing. It also did not say that telephone number information may be used only to determine the jurisdiction of wireline calls, as some commenters suggest.³² Rather, the Commission said, in plain and simple terms, that telephone number information reveals the jurisdiction of a call for purposes of assessing terminating switched access charges.³³

²⁹ *AT&T Comments* at 9.

³⁰ *See Sprint Comments* at 2.

³¹ *Global Crossing Comments* at 7.

³² *See, e.g., Sprint Comments* at 5.

³³ Global Crossing also claims that the “Joint Board also recommended that when the *geographic location* is unknown—not when the number is unknown—that another method be used. And that method is the PIU.” *Global Crossing Comments* at 7. The Joint Board, however, made no such recommendation. Presumably Global Crossing is referring to the Joint Board’s recommendation of the EES method for Feature Group A and Feature Group B traffic. As discussed above, however, the need for an alternative method for determining jurisdiction for Feature Group A and Feature Group B traffic arose precisely because of the lack of ANI information provided with Feature Group A and Feature Group B. The Joint Board thus recommended, and the Commission adopted, the EES method only in very specific circumstances in which originating and terminating telephone number information was not available.

Any dispute that the Commission's holding was limited to pre-wireless traffic was dispelled when the Wireline Competition Bureau used virtually the very same language in a recent order. On the same day SBC filed its petition, the Wireline Competition Bureau confirmed that for FGD and other access services "that provide automatic number identification (ANI) capability, jurisdiction is readily determined."³⁴ The Bureau made clear that alternate methods, such customer-supplied PIUs, are used to determine jurisdiction for terminating switched access services only "in instances where call identifying information [*i.e.*, CPN and ANI] is not available."³⁵ The Bureau's *Thrifty Call Order* thus reinforces the Commission's general proposition that telephone number information reveals the jurisdiction of a call for purposes of assessing terminating switched access charges

Indeed, CompTel (of which all of the long distance carriers who filed comments are members) said just that. In its Application for Review of the Bureau's *Thrifty Call Order*, CompTel indicated that the Bureau "correctly observed" that jurisdiction is readily determined through ANI.³⁶ Moreover, CompTel indicated that when such information is included on calls, "there would be no matter of proper tariff interpretation to bring to the Commission."³⁷ Similarly, AT&T has indicated its agreement with the general principle that telephone numbers are used to assess terminating switched access charges. In a recent filing made with the Tennessee Regulatory Authority, AT&T confirmed the process whereby ILECs such as BellSouth bill "AT&T and other IXCs interstate and intrastate access charges based upon call

³⁴ *Thrifty Call Order* ¶ 9.

³⁵ *Id.* ¶ 14 and n. 46.

³⁶ Thrifty Call, Inc. Petition for Declaratory Ruling Concerning BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1, DA 04-3576, *Application for Review* at 3-4 (Dec. 13, 2004).

³⁷ *Id.*

data sent by the IXC's to BellSouth. This call data is commonly referred to as calling party number ("CPN")."³⁸ According to AT&T, only when such CPN is unavailable do ILECs bill "interstate and intrastate access usage based upon IXC-provided 'percentage interstate usage' factors."³⁹ Thus, even the long distance carriers acknowledge the general principle that telephone numbers are the proper means of assessing interstate or intrastate terminating switched access charges.

In its efforts in this proceeding to suggest otherwise, AT&T and the other long distance carriers rely on scattered statements from disparate Commission orders, none of which address the issue of determining jurisdiction for purposes of assessing terminating switched access charges. First, AT&T relies upon a fragment of a footnote in an appendix to a 1986 Commission order addressing post-divestiture BOC provision of two-way mobile services. That order, however, did not address the proper mechanism for assessing the jurisdiction of terminating switched access services. Rather, the Commission set forth some general principles for the interconnection of cellular systems and wireline telephone systems, including compensation arrangements among cellular carriers and local telephone companies. In the course of setting forth those principles, the Commission determined that because "cellular carriers are generally engaged in the provision of local, intrastate, exchange telephone service, the compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern."⁴⁰ The Commission also noted as an exception to this rule situations in

³⁸ Complaint of AT&T Against BellSouth Over Tariff to Amend Jurisdictional Report Requirements No. TN2004-138, *Complaint of AT&T Against BellSouth Over Tariff to Amend Jurisdictional Report Requirements No. TN2004-138*, TRA Docket No. 04-00405 at 2 (Nov. 17, 2004). (Attachment A.)

³⁹ *Id.*

⁴⁰ *1986 Wireless Order*, App. B. ¶ 5.

which “some cellular carriers provide their customers with a service whereby a call to a subscriber’s local cellular number will be routed to them over interstate facilities when the customer is ‘roaming in a cellular system in another state.’”⁴¹ The Commission thus indicated that in such situations, the “cellular carrier is providing not local exchange service but interstate, interexchange service. In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge.”⁴²

The Commission’s *1986 Wireless Order* thus did not address the issue of using telephone numbers to assess terminating switched access charges. Rather, it simply established some general principles concerning the nature of wireless traffic. Moreover, even as to those principles, the Commission did not address the situation presented in this case in which a long distance carrier purchases terminating switched access in order to hand off a call from a wireless subscriber to a wireline customer. Rather, the Commission addressed the situation in which a wireline customer calls a local telephone number of a wireless subscriber who is traveling out of state. In that instance, the Commission held that the local wireline telephone company is permitted to charge the wireless carrier originating access rather than local interconnection rates. And even as to that situation, the Commission did not address at all the issue of how to determine whether to apply intrastate or interstate originating access rates in such situations. The focus of the Commission’s pronouncement was the distinction between interconnection and

⁴¹ *Id.* n.3 (emphasis added).

⁴² *Id.*

access charges, not intrastate or interstate access charges. In short, the Commission's 1986 *Wireless Order* did not speak to the issue presented in this case.⁴³

Nor did the Commission's *CMRS NPRM* address this issue.⁴⁴ There also the issue concerned interconnection between local wireline networks and wireless networks. The Commission did not address, let alone "reject" as AT&T baldly asserts, "jurisdictional methodologies for wireless calls that rely solely on a comparison of the originating and terminating telephone numbers."⁴⁵ At most, to further its inquiry on the "inseparability of interconnection rate regulation," the Commission "note[d]" the unremarkable proposition that from a purely geographic standpoint, "much of the LEC-CMRS traffic that may appear to be intrastate may actually be interstate, because CMRS service areas often cross state lines, and CMRS customers are mobile."⁴⁶ That general proposition concerning the nature of wireless

⁴³ If anything, the Commission's *CMRS Interconnection Order* highlights the industry-wide ramifications of any Commission order holding that telephone numbers may not be used to determine the jurisdiction for assessing access charges for calls to or from wireless wireline customers. Just as a wireless telephone number does not necessarily reveal the location of a wireless subscriber who places a call to a wireline customer, a wireless telephone number also does not reveal the location of a wireless customer who receives a call from a wireline customer. A Commission holding in this proceeding eliminating the use of telephone numbers for determining jurisdiction for purposes of assessing terminating access charges for wireless originated long distance calls would have to mean that telephone numbers could no longer be used to determine jurisdiction for assessing intercarrier compensation for calls from wireline customers to wireless customers.

⁴⁴ *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking*, CC Docket No. 94-54, FCC 95-505 ¶ 5 (Jan. 11, 1996) ("CMRS NPRM").

⁴⁵ *AT&T Comments* at 7.

⁴⁶ *CMRS Interconnection NPRM* ¶ 112. The Commission's *Interim CMRS Safe Harbor Order* and its *Vonage Order* say essentially the same thing. In the *Interim CMRS Safe Harbor Order*, the Commission merely said that a wireless telephone number "would not be useful to determine the originating point of a wireless call, because an area code is assigned to each wireless handset, and thus all calls from a particular handset would be recorded as being from the same area code, regardless of the location from which the call was actually placed." *Interim CMRS Safe Harbor Order* ¶ 31 n.63. Similarly, with respect to Vonage's VoIP service, the Commission merely said that "if a Minnesota NPA/NXX subscriber residing in Minnesota used its service outside the state to call someone in Minnesota, that call would appear to be an intrastate call when it is actually interstate." *Vonage Order* ¶ 27.

traffic, however, says nothing about the issue of using telephone numbers for the specific purpose of assessing terminating switched access charges for wireless originated long distance calls.

Finally, the Commission's *Local Competition Order*⁴⁷ does not hold that the assessment of intercarrier compensation for wireless calls must be based on the geographic location of wireless callers, as some long distance companies assert.⁴⁸ Rather, in the *Local Competition Order*, the Commission said that "*in certain cases*, the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges."⁴⁹ And, because of the mobile nature of wireless telecommunications, the Commission affirmed that carriers could use alternate methods for determining appropriate intercarrier compensation for wireless originated and terminated calls. In particular, the Commission allowed parties to use traffic studies as methods for rating wireless calls, but it did not require parties to use such studies.⁵⁰ The Commission also did not rule out the possibility of using telephone numbers for that purpose.

⁴⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd. 15,499 (Aug. 8, 1996).

⁴⁸ See, e.g., *Global Crossing Comments* at 1-2. As an initial matter, the focus of the paragraphs from the *Local Competition Order* upon which the long distance carriers rely is interconnection between local wireline networks and wireless networks. Thus, with respect to wireless "roaming," the Commission reached the same conclusion set forth in its *1986 Wireless Order*, i.e., that "most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some 'roaming' traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges." *Local Competition Order* ¶ 1043 n. 2485.

⁴⁹ *Local Competition Order* ¶ 44. (Emphasis Added.)

⁵⁰ *Id.*

At bottom, the isolated Commission statements relied upon by the long distance carriers prove no more than the obvious fact that a wireless telephone number does not necessarily reveal the geographic location of a wireless subscriber. They do not address the question of how to determine the jurisdiction of wireless originated traffic in order to assess terminating switched access charges. More specifically, they do not reject the use of telephone numbers—particularly in the absence of information revealing the actual geographic location of wireless subscribers—as an appropriate means of determining jurisdiction for the assessment of terminating switched access charges.

III. EVEN IF THE COMMISSION DISAGREES THAT IT IS APPROPRIATE TO USE TELEPHONE NUMBERS TO DETERMINE WHETHER TO ASSESS INTERSTATE OR INTRASTATE TERMINATING SWITCHED ACCESS CHARGES FOR WIRELESS ORIGINATED LONG DISTANCE CALLS, THE COMMISSION SHOULD REJECT THE METHOD PROPOSED BY GLOBAL CROSSING FOR DOING SO

Even if the Commission does not agree that SWBT may use telephone numbers to determine whether to bill long distance carriers interstate or intrastate terminating switched access rates for wireless originated long distance calls, the Commission should nonetheless deny Global Crossing's petition. Global Crossing requests that the Commission sanction use of the EES approach to determine the jurisdiction of wireless originated long distance calls.⁵¹ As Global Crossing describes the EES approach, the origin of a wireless originated long distance call is assumed to be the point at which the call is first "encountered" by the long distance company who carries that call and purchases terminating switched access from the ILEC.⁵² Such an approach, however, is an invitation to arbitrage and intentional misallocation of traffic, and the Commission should firmly reject its use for the traffic in question here.

⁵¹ *Global Crossing Petition* at 8-9.

⁵² *Id.* at 8, 11; *Sprint Comments* at 8.

As Sprint points out,⁵³ and as reflected by the Wireline Competition Bureau's recent *Thrifty Call Order*,⁵⁴ long distance carriers have incentives to "game the system" and falsely allocate traffic in order to reduce access payments. Modern networks easily allow long distance carriers to re-route traffic in order to implement such access avoidance schemes.⁵⁵ As Sprint illustrates, Global Crossing's proposal represents just such a danger. "Use of an IXC's POP as the origination point for wireless calls could enable the IXC to 'game' the EES methodology by, e.g., transporting an intrastate call from the wireless carrier's switch to an out-of-state switch to disguise the origin of the call."⁵⁶ For this reason, the Commission should reject Global Crossing's request to sanction the EES approach as a means of assessing interstate and intrastate terminating access charges for wireless originated calls.

If the Commission rejects SBC's petition to affirm the use of telephone number information to assess terminating access charges for wireless originated calls, SBC agrees with Sprint that, at a minimum, the Commission should "require the use of a reasonable and verifiable methodology that would give both the IXCs and LECs a high degree of comfort that the jurisdictional classifications of wireless to landline calls is relatively accurate."⁵⁷ SBC also

⁵³ *Sprint Comments* at 4; cf. *WilTel Comments* at 10 ("...the Commission must reinforce the requirements not to manipulate call detail records and CPN in order to falsify the originating and/or terminating locations of the call.")

⁵⁴ *Thrifty Call Order* ¶ 16.

⁵⁵ See, e.g., *WilTel Comments* at 2-3 ("In the early 1990s, some IXCs built sophisticated routing capabilities designed solely to minimize their exposure to intrastate access charges[.]")

⁵⁶ *Sprint Comments* at 8.

⁵⁷ *Sprint Comments* at 3. Sprint makes clear that Global Crossing's proposed approach does not "provide this high degree of comfort." *Id.*

agrees with AT&T, Sprint, and WilTel that under such a methodology, the start of a wireless originated call must be identified as the cell site at the beginning of the call.⁵⁸

Of course, ILECs do not possess information that would allow them to identify the location of the cell site at the initiation of a wireless originated long distance call. Long distance carriers must obtain that information from their wireless carrier customers and must pass along that information to the ILECs. Accordingly, SBC also agrees with Sprint that, under such a methodology, a long distance carrier “must maintain detailed information as to how it determined the jurisdiction of the wireless calls as well as subject itself to audits by the LECs to verify the validity of the jurisdictional split it provides to the LECs.”⁵⁹ Such additional protections are necessary to deter access avoidance schemes.

CONCLUSION

SBC requests that the Commission affirm that, in the absence of accurate and reliable information included in the call detail provided by long distance carriers as to the actual geographic location of wireless subscribers, SWBT’s interstate tariffs permit SWBT to use calling and called party telephone numbers to determine whether to assess interstate or intrastate terminating switched access rates for wireless originated calls. If the Commission does not do so, SBC requests that the Commission nonetheless reject Global Crossing’s demand that the Commission sanction the EES methodology for determining whether to assess interstate or intrastate terminating access charges for wireless originated calls. If the Commission rejects

⁵⁸ See *AT&T Comments* at 8; *Sprint Comments* at 3, 8; *WilTel Comments* at 7. As those carriers point out, use of such a methodology would be consistent with the Commission’s *Local Competition Order*. It also would be consistent with the Commission’s discussion in the *CMRS Safe Harbor Order* of CTIA’s proposal to “consider the originating point of a call to be the location of the antenna that first receives the call,” for purposes of determining the jurisdiction of wireless originated calls for reporting wireless interstate revenues for USF purposes. *CMRS Safe Harbor Order* ¶ 29.

⁵⁹ *Sprint Comments* at 8.

SBC's petition, the Commission should require that such determinations, *i.e.* the assessment of interstate or intrastate terminating access charges, must be made by comparing the location of the wireless cell site at the beginning of a wireless originated long distance call and the telephone number of the called party. SBC also requests that the Commission affirm that long distance carriers must maintain detailed records that are subject to audit by ILECs to verify the validity of the manner in which the long distance carriers calculate appropriate terminating switched access charge assessments.

Respectfully Submitted,

/s/ Jim Lamoureux

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Its Attorneys

January 18, 2005

ATTACHMENT A

RECEIVED
BEFORE THE
TENNESSEE REGULATORY AUTHORITY
2004 NOV 14

In re: Complaint of AT&T Against BellSouth
Over Tariff to Amend Jurisdictional Report
Requirements No. TN2004-138

TRA DOCKET ROOM

Docket No. 04-00405

**COMPLAINT OF AT&T AGAINST BELL SOUTH OVER TARIFF
TO AMEND JURISDICTIONAL REPORT REQUIREMENTS NO. TN2004-138**

AT&T Communications of the South Central States, LLC ("AT&T" or "Complainant") hereby files this Complaint requesting that the Tennessee Regulatory Authority ("TRA") cancel the tariff filing of BellSouth Telecommunications, Inc ("BellSouth") entitled "Tariff Filing to Amend BellSouth Jurisdictional Report Requirements," Tariff No. TN2004-138. In support of this Complaint, AT&T states:

1. The name and address of the Complainant are:

AT&T Communications of the South Central States, LLC
1230 Peachtree Street
4th Floor
Atlanta, Georgia 30309

2. All pleadings, documents, correspondence, notices, staff recommendations and orders filed, served or issued in this docket should be served on the following on behalf of Complainant:

Henry M. Walker
Boult, Cummings, Connors & Berry
P.O. Box 198062
Nashville, TN 37219-8062
Phone: (615) 252-2363

And

Gene V. Coker
1230 Peachtree Street NE
4th Floor
Atlanta, Georgia 30309
Phone: (404) 810-8700

3. BellSouth is an incumbent local exchange company (ILEC) providing telecommunications services in Tennessee. BellSouth's official business address is:

BellSouth Telecommunications, Inc.
675 W. Peachtree Street, NE
Atlanta, Georgia 30375

FACTUAL BACKGROUND

4. Complainant is certificated by the Tennessee Regulatory Authority as an Interexchange Carrier (IXC) and a Competitive Local Exchange Company (CLEC).

5. BellSouth bills AT&T and other IXCs interstate and intrastate access charges based upon call data sent by the IXCs to BellSouth. This call data is commonly referred to as calling party number ("CPN"). When there is insufficient call detail to allow BellSouth to determine the origin of the calling party, BellSouth bills interstate and intrastate access usage based upon IXC-provided "percentage interstate usage" (PIU) factors. Recognizing that there may be a percentage of usage where it is not possible for IXCs to know, and therefore to send to BellSouth, the needed originating information, BellSouth has limited or placed a "floor" on the amount of toll traffic upon which it will bill access charges based upon PIU factors. Any access usage greater than the established "floor" is automatically billed at the higher intrastate access rates regardless of the PIU or the actual jurisdictional nature of the calls.

6. On October 1, 2004, BellSouth filed revisions to its Tennessee Access Services Tariff, Tariff No. TN2004-138, to lower the established "floor" from 19.22% to 7%, a reduction of more than 63%. A copy of the revised tariff is attached. This change, which became effective on October 21, 2004, reduces the "floor," or amount of traffic which an IXC can send to BellSouth for termination without calling party number (CPN) information and still have such traffic terminated at interstate or intrastate access rates based on the PIU factors. In other words, if an IXC sends more than seven percent (7%) of its total traffic to BellSouth without CPN information, BellSouth automatically "re-classifies" all such traffic above the 7% "floor" as intrastate traffic, even if the traffic is, in fact, interstate.

7. It is AT&T's understanding that the new 7% "floor" was developed based on a study by Agilent Technologies that identified the traffic for which IXCs, on average, cannot pass CPN due solely to IXC technical limitations. The previous 19.22% "floor" was based on an overall average of actual CPN received from all IXCs in all states in the BellSouth region. There are a number of circumstances in which AT&T is not responsible for the lack of CPN on calls terminated by BellSouth. AT&T has no control over the lack of CPN when this information is not transmitted by the originating local exchange carrier. AT&T and other IXCs should not be forced to pay higher intrastate access rates on calls for which they have not been provided the CPN and that are actually interstate calls.

VIOLATIONS OF LAW

8. The Tennessee Regulatory Authority does not have authority to allow BellSouth to re-rate interstate traffic, rather, the TRA's jurisdiction is limited to that which is truly intrastate traffic in nature. See T.C.A. § 65-4-103. Therefore, unless BellSouth can demonstrate that traffic lacking

CPN information is intrastate traffic, neither BellSouth nor this Authority may impose intrastate access rates upon traffic that is within the sole jurisdiction of the FCC.

9 The lack of CPN information, in and of itself, is not determinative of whether a call is an interstate or intrastate call. Hence, the use of an arbitrary "floor," rather than the PIU, to determine jurisdiction is unjust and unreasonable in violation of T.C.A. §§ 65-5-101, 103 and 65-4-124(a).

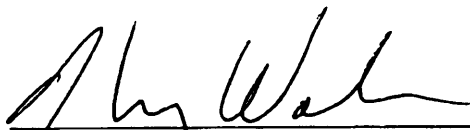
10. BellSouth has not demonstrated that it is applying the same terms and conditions as set forth in the revised tariff to its long distance affiliate or imputing these charges as a cost in the establishment of rates for BellSouth's own long distance services. Absent such evidence, the revised tariff may be discriminatory in violation of T.C.A. § 65-4-124(a) and may constitute an anti-competitive practice or a preference to an affiliated entity in violation of T.C.A. § 65-5-108(c).

11. The net impact of BellSouth's revised tariff is to increase the amount that AT&T pays for intrastate switched access without any increase in the actual number of intrastate minutes. In effect, the revised tariff constitutes an increase in BellSouth's intrastate switched access rates without any demonstrated basis for such increase, in violation of T.C.A. §§ 65-5-101, 103 and 109(g).

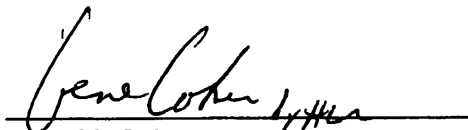
12. AT&T has a billing agreement in place with BellSouth and other Regional Bell Operating Companies ("RBOCs") that governs PIU determinations and audits. This agreement is consistent with BellSouth's previous tariff provisions and it is sufficient to protect BellSouth's interests. To the extent that BellSouth needs further protection from other carriers that do not have agreements in place, and to the extent the TRA deems the tariff to be appropriate, BellSouth should be limited to applying the new tariff only to those other carriers, while creating an exception for those carriers that have agreements.

WHEREFORE, AT&T respectfully requests that the TRA:

- A. Schedule and conduct a contested case hearing to address disputed issues of fact and law regarding Tariff No TN2004-138;
- B. Enter a final order denying and canceling the tariff; and
- C. Grant such further relief as the TRA deems just and proper.



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BELLSOUTH
TELECOMMUNICATIONS, INC
TENNESSEE
ISSUED October 1, 2004
BY President - Tennessee
Nashville, Tennessee

ACCESS SERVICES TARIFF

Sixteenth Revised Page 7
Cancels Fifteenth Revised Page 7

EFFECTIVE October 21, 2004

E2. GENERAL REGULATIONS**E2.3 Obligations of the Customer (Cont'd)****E2.3.12 Reserved for Future Use****E2.3.13 Coordination with Respect to Network Contingencies**

The customer shall, in cooperation with the Company, coordinate in planning the actions to be taken to maintain maximum network capability following natural or man-made disasters, which affect telecommunications services

E2.3.14 Jurisdictional Report Requirements¹**A. Jurisdictional Reports****1 Percent Interstate Usage (PIU)**

- a When the Company receives sufficient call detail to permit it to determine the jurisdiction of originating and terminating access minutes of use or messages, the Company will bill according to these actual minutes of use or messages and will not use the customer reported Percent Interstate Usage (PIU) factors. The Company developed percent interstate usage for access minutes of use will be determined at a statewide level.

The interstate percentage will be developed on a monthly basis by end office, when the access minutes are measured by dividing the measured interstate originating or terminating access minutes (the access minutes where the calling number is in one state and the called number is in another state) by the total originating or terminating access minutes.

The Company will bill according to actual measured minutes of use or messages for all services listed in b and 4 following with the exception of those listed below:

- BellSouth SWA Local Channel
- BellSouth SWA Dedicated Interoffice Channel
- BellSouth Billing Name and Address
- BellSouth Inward Operator Service
- Channelization Equipment
- DNALs² associated with BellSouth SWA LSBSA

Where the Company receives insufficient call detail to identify the calling station to determine the jurisdiction, the Company will charge the applicable rates for terminating BellSouth SWA as set forth in this Tariff.

There may be a percentage of usage where it is not possible to know, and therefore to send to BellSouth, the needed originating information. Accordingly, BellSouth will charge the terminating BellSouth SWA rate for only those minutes lacking originating information from all SWA customers, currently 7.00% (the "floor"). For example, if 30% of a customer's minutes sent to BellSouth do not contain sufficient originating information to allow BellSouth to determine the originating location, then BellSouth would apply the provisions of this tariff to those minutes exceeding the "floor", or 23.00% in this example.

BellSouth will recalculate the overall SWA customer average "floor" quarterly. In addition, subsequent reviews or audits of specific customer usage may result in a new "floor" for that customer.

In the event that BellSouth applies the intrastate terminating access rate to calls without sufficient originating information as provided in this tariff, BellSouth's access customers will have the opportunity to request backup documentation of BellSouth's basis for such application, and further request that BellSouth change the application of the intrastate access rate upon a showing of why the intrastate rate should not be applied.

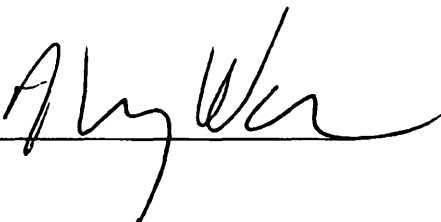
Note 1: Except where indicated herein, references to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.1.3.A (e.g., the term BellSouth SWA FGA represents both BellSouth SWA FGA and BellSouth SWA LSBSA).

Note 2: Where BellSouth SWA LSBSA is provisioned with a DNAL, the DNAL rates should be apportioned between interstate and intrastate using the same PIU factor as is applied to the associated BellSouth SWA LSBSA.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Complaint was furnished by U. S. Mail to the following this 17th day of November, 2004:

Guy Hicks
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201


Henry Walker